

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

FILED/ACCEPTED

APR 12 2007

Federal Communications Commission  
Office of the Secretary

In the Matter of

Amendment of Section 73.202(b)  
 Table of Allotments  
 FM Broadcast Stations  
 (Meeteetse, Wyoming)

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MB Docket No. 05-243  
 RM - 11363  
 RM - 11364  
 RM - 11365

To: Office of the Secretary  
 Attn: Assistant Chief, Audio Division  
 Media Bureau

**REPLY COMMENTS**

Millcreek Broadcasting, LLC; Simmons-SLC-LS, LLC; 3 Point Media - Coalville, LLC; 3 Point Media - Delta, LLC; and College Creek Broadcasting LLC (together, the "Joint Parties"), submit their Reply Comments in the above captioned proceeding to correct **an** error in the **April** 2, 2007 Public Notice,<sup>1</sup> and to address the elicitation of other interests in the nonadjacent upgrade proposal discussed in the same Public Notice. In **support** hereof, the Joint Parties state as follows:

1. On February 10, 2006, the Joint Parties amended their Counterproposal to allot Channel 261C3 at Wilson, Wyoming (instead of Channel 260C3) for use by Station KITT(FM). This amendment was necessary to give the licensee of KITT more site flexibility **and** has the added benefit of eliminating the conflict between the Joint Parties' Counterproposal **and** the proposed allotment of Channel 259C at Meeteetse, Wyoming. This amendment was not reflected in the April 2, 2007 Public Notice.

<sup>1</sup> There were three Counterproposals filed in **this** proceeding. The Joint Parties filed one of these Counterproposals, which was released on Public Notice on April 2, 2007 (**Report No. 2811**) and assigned rule making number RM-11365. The other **two** Counterproposals were released on Public Notice on March 28, 2007 (**Report No. 2809**) (RM-11364) and (**Report No. 2808**) (RM-11363).

2. The same April 2, **2007** Public Notice also states that interested parties may file competing expressions of interest for Channel 260C3 at Weston, Idaho because the Joint Parties' proposal for Station KLZX(FM) at Weston was a nonadjacent upgrade. However, KLZX(FM) is now licensed to operate on Channel 240C3 and thus the Joint Parties' proposal for this station is not a non-adjacent **upgrade**.<sup>2</sup> Rather, it is an equivalent nonadjacent channel change, for which no competing expressions **of** interest are permitted.

3. Nevertheless, even if the Commission accepts competing expressions **of** interest in Channel 260C3 at Weston, any party that submits an expression of interest must also obtain the consent of the licensee **of** Stations KZDX(FM), Burley, Idaho, and KITT(FM), Soda Springs, Idaho to modify their facilities. This consent is necessary because the allotment **of** Channel 260C3 at Weston would be short-spaced to the licensed and permitted facilities for those stations.

4. Finally, **as** part of their Counterproposal, the Joint Parties also requested that the Commission issue an Order to Show Cause to Idaho Wireless Corporation ("Idaho Wireless"), the licensee of Station KZBQ(FM), Pocatello, Idaho to show why this station's channel should not be changed from its current site. This channel change will permit the implementation of the public interest benefits of the Joint Parties' Counterproposal. The Joint Parties encourage the Commission to expeditiously issue an Order to Show Cause to Idaho Wireless. The Joint Parties reiterate that they will reimburse Idaho Wireless for its reasonable expenses in changing channels in accordance with *Circleville, Ohio*, 8 FCC 2d 149 (1967). Expeditious action is also necessary because Station KFMR(FM), Marbleton, Wyoming (one of the stations involved in the

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<sup>2</sup> See BLH-20050707AAV. KLZX(FM) held a permit to operate on Channel 240C3 when the Joint Parties filed their Counterproposal. The Joint Parties disclosed this in their Counterproposal and indicated that Channel 260C3 could also be substituted for Channel 240C3 at the site in KLZX(FM)'s construction permit (BPH-20020404AAH). See Counterproposal at p. 7.

Joint Parties' Counterproposal) currently holds an original construction permit that will expire on April 21, 2008.<sup>3</sup> The Joint Parties have proposed to move **KFMR** from Marbleton to Ballard, Wyoming and change its channel from 239C1 to 239C3. The permittee of KFMR cannot commence construction until the Commission issues its decision in this proceeding. Also, because this is an original construction permit, the permittee **of** KFMR will lose the permit if it does not complete construction by April 21, 2008 and, more importantly, the community of Marbleton would then lose its only potential local **service**.<sup>4</sup>

WHEREFORE, for the foregoing reasons, the Commission should take notice of the error in the April 2, 2007 Public Notice, it should expeditiously issue an Order to Show Cause as requested in the Joint Parties' Counterproposal, and it should expeditiously resolve this proceeding so that KFMR can commence construction of its facilities.

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<sup>3</sup> See BNPH-20041229AFT.

<sup>4</sup> The Joint Parties are not leaving a community without local service. Rather, they are leaving a community without potential local service. The Commission has held that the removal of unbuilt facilities does not present the same loss of service concerns as the removal of an operating station that the public has become reliant upon. See, e.g., *Linden, Texas, et al.*, 16 FCC Rcd 10853, 10854 (2001); *Grand Isle and Empire, Louisiana*, 15 FCC Rcd 9162, 9163 (2000); *Chatom and Grove Hill, Alabama*, 12 FCC Rcd 7664, 7665 (1997).

Respectfully submitted,

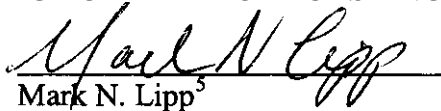
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April 12, 2007

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<sup>5</sup> Please note the change in address for counsel for the purpose of service.

## **CERTIFICATE OF SERVICE**

I, Elbert Ortiz, in the law firm of Wiley Rein LLP, do hereby certify that I have on this 12th day of April, 2007, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Reply Comments"** to the following:

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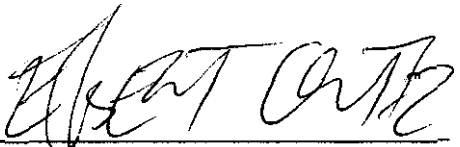
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